

AMENDED IN ASSEMBLY MARCH 27, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1714

Introduced by Assembly Member Halderman

February 16, 2012

An act to amend Section 12305.87 of the Welfare and Institutions Code, relating to in-home supportive services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1714, as amended, Halderman. In-home supportive services: providers.

Existing law provides for the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Existing law prohibits a ~~person~~ *new applicant or an applicant whose application has been denied on the basis of a conviction and for whom an appeal of that denial is pending* from providing supportive services if he or she has been convicted of specified crimes in the previous 10 years. ~~Under existing law, Existing law requires the State Department of Social Services and the State Department of Health Care Services are required to develop a provider enrollment form that each person seeking to provide supportive services is required to must~~ complete, sign under penalty of perjury, and submit to the county, containing designated statements relating to the provider's criminal history. Existing law authorizes a recipient of services who wishes to employ a provider applicant who has been convicted of a specified offense to submit to the county a prescribed individual waiver, signed by the recipient, or by the recipient's authorized representative, ~~and returned to the county welfare department.~~

This bill would add the *felony* offenses of forgery, embezzlement, extortion, and identity theft to the list of criminal convictions that would preclude an ~~individual~~ *applicant* from providing supportive services. The bill would require the State Department of Social Services to revise the provider enrollment form to account for these additional criminal exclusions. By changing the definition of the crime of perjury, and by increasing the duties of counties in administering the In-Home Supportive Services program, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12305.87 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 12305.87. (a) (1) Commencing 90 days following the effective
- 4 date of the act that adds this section, a person specified in paragraph
- 5 (2) shall be subject to the criminal conviction exclusions provided
- 6 for in this section, in addition to the exclusions required under
- 7 Section 12305.81.
- 8 (2) This section shall apply to a person who satisfies either of
- 9 the following conditions:
- 10 (A) He or she is a new applicant to provide services under this
- 11 article.
- 12 (B) He or she is an applicant to provide services under this
- 13 article whose application has been denied on the basis of a
- 14 conviction and for whom an appeal of that denial is pending.
- 15 (b) Subject to subdivisions (c), (d), and (e), an applicant subject
- 16 to this section shall not be eligible to provide or receive payment
- 17 for providing supportive services for 10 years following a

conviction for, or incarceration following a conviction for, any of the following:

(1) A violent or serious felony, as specified in subdivision (c) of Section 667.5 of the Penal Code and subdivision (c) of Section 1192.7 of the Penal Code.

(2) A felony offense for which a person is required to register under subdivision (c) of Section 290 of the Penal Code. For purposes of this paragraph, the 10-year time period specified in this section shall commence with the date of conviction for, or incarceration following a conviction for, the underlying offense, and not the date of registration.

(3) A felony offense described in paragraph (2) of subdivision (c) or paragraph (2) of subdivision (g) of Section 10980.

(4) ~~Forgery~~, *A felony forgery offense*, as specified in Section 470 of the Penal Code.

(5) ~~Embezzlement~~, *A felony embezzlement offense*, as specified in Section 503 of the Penal Code.

(6) ~~Extortion~~, *A felony extortion offense*, as specified in Section 518 of the Penal Code.

(7) ~~Identity theft~~, *A felony identity theft offense*, as specified in Section 530.5 of the Penal Code.

(c) Notwithstanding subdivision (b), an application shall not be denied under this section if the applicant has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or if the information or accusation against him or her has been dismissed pursuant to Section 1203.4 of the Penal Code.

(d) (1) Notwithstanding subdivision (b), a recipient of services under this article who wishes to employ a provider applicant who has been convicted of an offense specified in subdivision (b) may submit to the county an individual waiver of the exclusion provided for in this section. This paragraph shall not be construed to allow a recipient to submit an individual waiver with respect to a conviction or convictions for offenses specified in Section 12305.81.

(2) The county shall notify a recipient who wishes to hire a person who is applying to be a provider and who has been convicted of an offense subject to exclusion under this section of that applicant's relevant criminal offense convictions that are

covered by subdivision (b). The notice shall include both of the following:

(A) A summary explanation of the exclusions created by subdivision (b), as well as the applicable waiver process described in this subdivision and the process for an applicant to seek a general exception, as described in subdivision (e). This summary explanation shall be developed by the department for use by all counties.

(B) An individual waiver form, which shall also be developed by the department and used by all counties. The waiver form shall include both of the following:

(i) A space for the county to include a reference to any Penal Code sections and corresponding offense names or descriptions that describe the relevant conviction or convictions that are covered by subdivision (b) and that the provider applicant has in his or her background.

(ii) A statement that the service recipient, or his or her authorized representative, if applicable, is aware of the applicant's conviction or convictions and agrees to waive application of this section and employ the applicant as a provider of services under this article.

(3) To ensure that the initial summary explanation referenced in this subdivision is comprehensible for recipients and provider applicants, the department shall consult with representatives of county welfare departments and advocates for, or representatives of, recipients and providers in developing the summary explanation and offense descriptions.

(4) The individual waiver form shall be signed by the recipient, or by the recipient's authorized representative, if applicable, and returned to the county welfare department by mail or in person. Except for a parent, guardian, or person having legal custody of a minor recipient, a conservator of an adult recipient, or a spouse or registered domestic partner of a recipient, a provider applicant shall not sign his or her own individual waiver form as the recipient's authorized representative. The county shall retain the waiver form and a copy of the provider applicant's criminal offense record information search response until the date that the convictions that are the subject of the waiver request are no longer within the 10-year period specified in subdivision (b).

(5) An individual waiver submitted pursuant to this subdivision shall entitle a recipient to hire a provider applicant who otherwise

1 meets all applicable enrollment requirements for the In-Home
2 Supportive Services program. A provider hired pursuant to an
3 individual waiver may be employed only by the recipient who
4 requested that waiver, and the waiver shall only be valid with
5 respect to convictions that are specified in that waiver. A new
6 waiver shall be required if the provider is subsequently convicted
7 of an offense to which this section otherwise would apply. A
8 provider who wishes to be listed on a provider registry or to provide
9 supportive services to a recipient who has not requested an
10 individual waiver shall be required to apply for a general exception,
11 as provided for in subdivision (e).

12 (6) Nothing in this section shall preclude a provider who is
13 eligible to receive payment for services provided pursuant to an
14 individual waiver under this subdivision from being eligible to
15 receive payment for services provided to one or more additional
16 recipients who obtain waivers pursuant to this same subdivision.

17 (7) The state and a county shall be immune from any liability
18 resulting from granting an individual waiver under this subdivision.

19 (e) (1) Notwithstanding subdivision (b), an applicant who has
20 been convicted of an offense identified in subdivision (b) may seek
21 from the department a general exception to the exclusion provided
22 for in this section.

23 (2) Upon receipt of a general exception request, the department
24 shall request a copy of the applicant's criminal offender record
25 information search response from the applicable county welfare
26 department. Notwithstanding any other provision of law, the county
27 shall provide a copy of the criminal offender record information
28 search response, as provided to the county by the Department of
29 Justice, to the department. The county shall provide this
30 information in a manner that protects the confidentiality and
31 privacy of the criminal offender record information search
32 response. The state or federal criminal history record information
33 search response shall not be modified or altered from its form or
34 content as provided by the Department of Justice.

35 (3) The department shall consider the following factors when
36 determining whether to grant a general exception under this
37 subdivision:

38 (A) The nature and seriousness of the conduct or crime under
39 consideration and its relationship to employment duties and
40 responsibilities.

1 (B) The person's activities since conviction, including, but not
2 limited to, employment or participation in therapy education, or
3 community service, that would indicate changed behavior.

4 (C) The number of convictions and the time that has elapsed
5 since the conviction or convictions.

6 (D) The extent to which the person has complied with any terms
7 of parole, probation, restitution, or any other sanction lawfully
8 imposed against the person.

9 (E) Any evidence of rehabilitation, including character
10 references, submitted by the person, or by others on the person's
11 behalf.

12 (F) Employment history and current or former employer
13 recommendations. Additional consideration shall be given to
14 employer recommendations provided by a person who has received
15 or has indicated a desire to receive supportive or personal care
16 services from the applicant, including, but not limited to, those
17 services, specified in Section 12300.

18 (G) Circumstances surrounding the commission of the offense
19 that would demonstrate the unlikelihood of repetition.

20 (H) The granting by the Governor of a full and unconditional
21 pardon.

22 (f) If the department makes a determination to deny an
23 application to provide services pursuant to a request for a general
24 exception, the department shall notify the applicant of this
25 determination by either personal service or registered mail. The
26 notice shall include the following information:

27 (1) A statement of the department's reasons for the denial that
28 evaluates evidence of rehabilitation submitted by the applicant, if
29 any, and that specifically addresses any evidence submitted relating
30 to the factors in paragraph (3) of subdivision (e).

31 (2) A copy of the applicant's criminal offender record
32 information search response, even if the applicant already has
33 received a copy pursuant to Section 12301.6 or 12305.86. The
34 department shall provide this information in a manner that protects
35 the confidentiality and privacy of the criminal offender record
36 information search response.

37 (A) The state or federal criminal history record shall not be
38 modified or altered from its form or content as provided by the
39 Department of Justice.

1 (B) The department shall retain a copy of each individual's
2 criminal offender record information search response until the date
3 that the convictions that are the subject of the exception are no
4 longer within the 10-year period specified in subdivision (b), and
5 shall record the date the copy of the response was provided to the
6 individual and the department.

7 (C) The criminal offender record information search response
8 shall not be made available by the department to any individual
9 other than the provider applicant.

10 (g) (1) Upon written notification that the department has
11 determined that a request for exception shall be denied, the
12 applicant may request an administrative hearing by submitting a
13 written request to the department within 15 business days of receipt
14 of the written notification. Upon receipt of a written request, the
15 department shall hold an administrative hearing consistent with
16 the procedures specified in Section 100171 of the Health and Safety
17 Code, except where those procedures are inconsistent with this
18 section.

19 (2) A hearing under this subdivision shall be conducted by a
20 hearing officer or administrative law judge designated by the
21 director. A written decision shall be sent by certified mail to the
22 applicant.

23 (h) The department shall revise the provider enrollment form
24 developed pursuant to Section 12305.81 to include both of the
25 following:

26 (1) The text of subdivision (c) of Section 290 of the Penal Code,
27 subdivision (c) of Section 667.5 of the Penal Code, subdivision
28 (c) of Section 1192.7 of the Penal Code, and paragraph (2) of
29 subdivisions (c) and (g) of Section 10980.

30 (2) A statement that the provider understands that if he or she
31 has been convicted, or incarcerated following conviction for, any
32 of the crimes specified in the provisions identified in paragraphs
33 (1) to (7), inclusive, of subdivision (b), in the last 10 years, and
34 has not received a certificate of rehabilitation or had the
35 information or accusation dismissed, as provided in subdivision
36 (c), he or she shall only be authorized to receive payment for
37 providing in-home supportive services under an individual waiver
38 or general exception as described in this section, and upon meeting
39 all other applicable criteria for enrollment as a provider in the
40 program.

(i) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this section through all-county letters or similar instructions from the department until regulations are adopted. The department shall adopt emergency regulations implementing these provisions no later than July 1, 2011. The department may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.

(2) The initial adoption of emergency regulations pursuant to this section and one readoption of emergency regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

(j) In developing the individual waiver form and all-county letters or information notices or similar instructions, the department shall consult with stakeholders, including, but not limited to, representatives of the county welfare departments, and representatives of consumers and providers. The consultation shall include at least one in-person meeting prior to the finalization of the individual waiver form and all-county letters or information notices or similar instructions.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

1 However, if the Commission on State Mandates determines that
2 this act contains other costs mandated by the state, reimbursement
3 to local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.

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